

### **REMARKS**

Reconsideration of the present application in view of the above amendments and following remarks is respectfully requested.

### **Status of the Claims**

Claims 26, 28-30, 32-34, 36-37 and 39-43 are presented. Claims 26, 28-30, 32, 34, 39 and 42-43 are amended. Independent claims 26 and 42 are amended to include the limitations of claims 33 and 40, now cancelled. Claim 28 is amended to include a mixture of fatty acid esters as the oil phase, as supported in the specification as originally filed on page 5, lines 1-31. Further, the claims are amended to overcome the new matter rejections, as discussed below, as well as to improve clarity. Also, the bonds in the structural formula of claim 32 are corrected. Support is found throughout the specification as originally filed. Claims 33 and 40 are cancelled without prejudice. No new claims are added in the present action.

No new matter has been introduced.

### **Summary of the Invention as Claimed**

As presently amended, the claims are directed to a method for treating plants with an agrochemical, comprising spraying the plants with the agrochemical in combination with a micro-emulsion composition consisting of (a) **an oil phase**, (b) **a hydrophilic emulsifier selected from alkyl(oligo)glycosides**, (c) **a lipophilic co-emulsifier selected from the group consisting of glycerol esters of C6-C22 fatty acids, and sorbitan esters of C6-C22 fatty acids**, and (d) water (claim 26). As claimed, the agrochemical is a water-soluble or substantially water-soluble agrochemical (claims 26, 42). In preferred embodiments the agrochemical is a glyphosate herbicide or salt thereof (claims 37, 41). In another embodiment, the micro-emulsion composition consists of components (a)-(d) above, and (e) **one or more auxiliaries** selected from a Markush group of such compounds (claim 42). Preferred compounds (e) include citric acid, propylene glycol and mixtures thereof (claim 43).

**Rejections under 35 U.S.C. § 112, first paragraph**

Previously pending claims 26, 28-30, 32-34, 36-37 and 39-43 were rejected under 35 U.S.C. § 112, first paragraph, for allegedly containing new matter in claims 26 and 42 (the phrase “at least one”) and 43 (the phrase “and mixtures thereof”).

In response, although applicants do not necessarily agree with the Examiner’s arguments in this regard, in order to further prosecution, the phrase “at least one” has been removed from the claims.

However, the phrase “and mixtures thereof” in claim 43 is supported in the Examples, specifically Adjuvant B, which expressly contains both citric acid and propylene glycol (specification as originally filed, Table 1, page 13, lines 22-23). Therefore, applicants aver that the phrase is not new matter.

In view of these amendments and arguments the Examiner is respectfully requested to withdraw the new matter rejections.

**Rejections under 35 U.S.C. § 103(a)**

Previously pending claims 26, 28-30, 32-34, 36-37 and 39-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Auda et al. (US 6,586,366; “Auda”). The rejection is respectfully traversed.

Auda discloses oil-based emulsifiable concentrates and agrochemical formulations resulting therefrom, comprising (a) at least one oil component; (b) at least one surfactant hydrocarbyl saccharide (alkyl polyglycoside); and (c) at least one other nonionic **polyalkoxylated** surfactant. Agrochemicals, including the herbicide glyphosate, may be included. It is noted that both components (b) and (c) are **hydrophilic**, either by virtue of having a saccharide/polyglycoside moiety (component (b)) or a polyalkoxylated moiety (component (c)).

The Examiner cited polyethoxylated sorbitan monolaurate as a **lipophilic** emulsifier, thereby making it equivalent to the unethoxylated sorbitan monolaurate claimed by applicants. However these compounds are clearly very different in their physicochemical properties. One particular ethoxylated non-ionic surfactant specified by Auda in his table of non-ionic surfactant

components, column 7, lines 10-20, is **pentaethoxylated** sorbitan monolaurate. Applicants aver that this compound would not be considered to be a lipophilic emulsifier, but instead, by virtue of the polyethoxylation, would be considered by one skilled in the art to be **hydrophilic**. Thus, the combination cited by Auda (and the Examiner) of a hydrocarbyl polysaccharide and (EO)<sub>5</sub> sorbitan monolaurate, is a **hydrophilic** surfactant combination, and not the balanced combination of hydrophilic emulsifiers and lipophilic co-emulsifiers claimed by applicants.

Further, as discussed in applicants' specification, **alkoxylated** non-ionic surfactants are contraindicated as emulsifiers in agrochemical formulations due to biodegradability, phytotoxicity and microemulsion stability issues .

Even though applicants do not necessarily agree with the Examiner's characterizations of Auda, in order to further prosecution, the claims have been amended in a manner which overcomes the Examiner's rejections. Thus, as presently amended, independent claims 26 and 42 recite hydrophilic emulsifier component (b) limited to alkyl(oligo)glycosides, and lipophilic co-emulsifier component (c) limited to the group consisting of glycerol esters of C6-C22 fatty acids and sorbitan esters of C6-C22 fatty acids. It is emphasized that these limitations are not new, but represent the incorporation of the limitations from claims 33 and 40, now cancelled. Since these limitations do not allow the inclusion of alkoxylated (specifically, ethoxylated) species, the claims as presently amended define novel and patentably unobvious subject matter over the cited art.

Previously pending claims 42-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Auda in view of SU 450563 (English abstract; "SU") or Tang (CN 1052302, English abstract; "Tang") or Okada (JP 04046104, English abstract; "Okada"). The rejections are respectfully traversed.

Auda is discussed above. SU, Tang and Okada were added for disclosure of a composition comprising citric acid. However all 3 additional references disclose **enhancement of plant growth** in the presence of citric acid,

not the herbicidal effect claimed by applicants. Since eliminating plant growth (herbicidal effect) and enhancement of plant growth are opposite and mutually exclusive effects, all 3 references are improperly combined with Auda for this rejection. Therefore, the rejection cannot stand.

For at least these reasons, applicants' claims as presently amended define novel and patentably unobvious subject matter over the cited art.

### **Conclusion**

In summary, in view of the above claim amendments and remarks, applicants believe that the pending claims as presently amended are in condition for allowance, or, in the alternative, in better condition for examination on appeal. The Examiner is respectfully requested to enter the amendments, reconsider, withdraw the rejections and allow the claims.

If any additional fees are required in support of this application, authorization is granted to charge our Deposit Account No. 50-1943.

Respectfully submitted,

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